IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 3354 of 2007(Y)

CMA.34/2006 of I ADDL. DISTRICT COURT, PALAKKAD
OS.33/2006 of PRL.MUNSIFF COURT, PALAKKAD

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PETITIONER:

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1. MAYILSWAMY @ PARAMASIVAM,
   S/O.ARUCHAMY KOUNDER, AGED 49, RESIDING AT
   PUDUR KALAM, POOLAMBARA, PUDUSSERI AMSOM,
   DESOM, PALAKKAD TALUK.

2. AANDIYAPPAN, AGED 38, S/O. -DO-
   IN -DO- -DO-

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:

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1. ABDUL KHADER, S/O.LATE IBRAHIM RAWTHER,
   RESIDING AT POOLAMBARA KALAM,
   PUDUSSERY AMSOM, DESOM, PALAKKAD TALUK.

2. NOOR MUHAMMED, S/O. -DO- -DO-

3. SULAIMAN, S/O. -DO- -DO-

4. MOULAVI SAIT ABBAS, S/O. -DO- -DO-

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.3354 OF 2007

Dated 31st January 2007

J U D G M E N T

Petitioners are plaintiffs in O.S.33/2006 on the file of Munsiff court, Palakkad. Suit was filed for a mandatory injunction for removing obstruction caused to plaint B schedule cart track and for permanent prohibitory injunction restraining obstructions being caused to the pathway. Case of petitioners is that plaint B schedule cart track leads to A schedule property and it was being used for taking tractors and bullock carts to plaint A schedule property and respondents have no right to obstruct the cart track which was being used by petitioners and predecessors for the last more than 100 years and respondents forcibly caused obstruction to the cart track and they have no right to do so. Petitioners filed I.A.121/2006 for an interlocutory order of mandatory injunction directing respondents to remove the obstruction caused to the cart track. Respondents filed objection contending that petitioners have no

right over the property and they are not entitled to the interlocutory mandatory injunction. Learned Munsiff under Ext.P1 order finding that petitioners did not establish a prima facie case dismissed the application. Petitioners challenged the order before District court, Palakkad in C.M.A.34/2006. Under Ext.P2 order learned District Judge confirmed Ext.P1 order and dismissed the appeal. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners were heard. Learned counsel vehemently argued that records produced by petitioners prima facie establish a strong case in favour of petitioners and in such circumstances, courts below should have granted an interlocutory mandatory injunction sought for.

3. On hearing learned counsel appearing for petitioners and going through Exts.P1 and P2 orders, I do not find any reason to interfere with the order dismissing the application for interlocutory mandatory injunction in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. In fact, the very suit is for mandatory injunction to remove the obstruction caused to alleged cart track which was disputed by

respondents. In such circumstances, when the learned Munsiff and learned District Judge found that petitioners have no prima facie case, much less a strong case, petitioners are not entitled to the interlocutory mandatory injunction. Learned Munsiff is directed to dispose the suit, as expeditiously as possible, untrammelled by any observation in Exts.P1 and P2 orders.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.